Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1283

LEAGUE OF UNITED LATIN AMERICAN CITIZENS,

Petitioner,

V.

LO-VACA GATHERING COMPANY, ET AL.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF TEXAS

The City of San Antonio, acting by and through the City Public Service Board of San Antonio (San Antonio), hereby opposes the Petition for Writ of Certiorari filed herein by the League of United Latin American Citizens (LULAC) and Petitioner's alternative appeal, and requests this honorable Court to deny certiorari to review the judgments and opinion of the Texas Appellate Courts on grounds that the decisions of those Courts were properly based upon the well-settled procedural rules of Texas jurisprudence and there are no federal questions here involved.

STATEMENT OF THE CASE

The lawsuit in which Petitioner LULAC attempted to intervene was originally filed as a declaratory judgment action in March, 1972, against the City of San Antonio (San Antonio),

acting by and through its municipally owned gas and electric utility, the City Public Service Board, by the City's gas suppliers, Coastal States Gas Producing Company (Coastal) and Lo-Vaca Gathering Company (Lo-Vaca). Lo-Vaca Gathering Company, et al. v. City of San Antonio, No. F-246,550, 166th Judicial District Court of Bexar County, Texas. San Antonio's Answer and Suit by Counterclaims, filed April 21, 1972, as amended July 22, 1974, seeks damages for breach of contractual and public utility pipeline duties by these gas suppliers.

LULAC attempted to intervene in this State-court action by filing, on September 16, 1974, a pleading alleging that it is comprised of and respresents "residents of San Antonio" and "ratepayers of the City Public Service Board of San Antonio." Motions to Strike the Intervention were heard before and granted by the Bexar County District Court on November 15, 1974. LULAC appealed this Order to the Texas Court of Civil Appeals in LULAC v. Lo-Vaca Gathering Company, et al., Cause No. 15,422. The appeal was dismissed in May, 1975, because of LULAC's failure to file a brief.

On April 22, 1975, LULAC filed a "Motion to Set Aside Order Constituting the City Public Service Board–City of San Antonio, as Trustee for Ratepayers" in the District Court, by which Motion LULAC sought to reenter the cause below and to set aside the District Court's Order of November 19, 1974, striking its Original Petition in Intervention. The District Court, after a hearing held on May 6, entered an order denying LULAC's Motion on May 15, 1975.

LULAC appealed this Order to the Court of Civil Appeals in Cause No. 15474, and on September 3, 1975, that Court handed down an opinion dismissing the appeal for want of jurisdiction, since (1) an order dismissing a petition in intervention may not be appealed by the intervenor prior to final judgment between the original parties and (2) the statutes urged by LULAC authorizing interlocutory appeals were not applicable.

On October 28, 1975, LULAC appealed to the Texas Supreme Court from the Court of Civil Appeals judgments in

both Causes 15422 and 15474. That Court on December 17, 1975, handed down an order refusing LULAC's appeal with the notation that no reversible error had been committed by the Court below.

ARGUMENT

There are no federal questions involved. The basis for the dismissal of LULAC's appeal for want of jurisdiction is well-settled under Texas law and is the type of local matter, not based upon federal grounds, with which this Court has refused to concern itself. See Bullock v. Florida, 254 U.S. 513 (1920); Nickel v. Cole, 256 U.S. 222 (1921); Wolfe v. North Carolina, 364 U.S. 177 (1960).

The rulings of the Texas Court of Civil Appeals and the Texas Supreme Court are supported by well-settled principles of Texas procedural law. In Texas, an order dismissing or striking a petition in intervention, or denying permission to intervene, may not be appealed by the intervenor before the rendition of final judgment between the original parties. Stewart v. State, 42 Tex. 242 (1875); Bryant v. Barnes, 433 S.W. 2d 786 (Tex. Civ. App. 1968, writ ref'd); Mueller v. Banks, 302 S.W. 2d 447 (Tex. Civ. App. 1963, writ ref'd).

Likewise, LULAC's attempts to characterize the State district court's order as one of appealable nature are without merit. The statutes LULAC cites, Articles 2250 and 4662, Vernon's Texas Civil Statutes Annotated, which allow interlocutory appeals from orders granting injunctive relief and orders overruling motions to vacate the appointment of receivers or trustees, are clearly inapplicable to an order dismissing an intervention. Petitioner's request for a writ of certiorari from this Court therefore has no merit and should be denied.

Nor has the issue of the validity of any Texas statute ever been raised in this cause, either as to any asserted repugnance to the Constitution, laws or treaties of the United States, or

otherwise. Hence, there is no appeal jurisdiction by this Court under 28 U.S.C. §1257(2).

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent prays that this Court deny Petitioner's "Petition for Writ of Certiorari to the Supreme Court of Texas" and its alternative appeal from the judgments of the Courts below.

Respectfully submitted,

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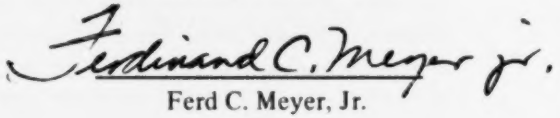

Ferd C. Meyer, Jr.

Of Counsel:

Steptoe & Johnson

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CERTIFICATE OF SERVICE

I certify that true and correct copies of the foregoing Brief in Opposition to "Petition for Writ of Certiorari to the Supreme Court of the State of Texas" were served on opposing counsel in accordance with the Revised Rules of the Supreme Court on this 5th day of April, 1976.

Ferdinand C. Meyer, Jr.